



OFFICE OF THE POLICE COMMISSIONER  
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January 8, 2016

Memorandum for: Deputy Commissioner Trials

Re: **Police Officer Francisco Payano**  
Tax Registry No. 933155  
Quartermaster Section  
Disciplinary Case No. 2011-5039

The above named member of the service appeared before the Court on June 4-5, August 5, and August 7, 2015, charged with the following:

**DISCIPLINARY CASE NO. 2011-5039**

1. Said Police Officer Francisco Payano, while assigned to Narcotics Borough Bronx, on or about and between March 19, 2009 through January 27, 2010, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer gave inaccurate testimony during a criminal court proceeding. *(As amended)*

**P.G. 203-10, Page 1, Paragraph 5**

**PUBLIC CONTACT –  
PROHIBITED CONDUCT**

2. Said Police Officer Francisco Payano, while assigned to Narcotics Borough Bronx, on or about January 2, 2009, in the County of the Bronx, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer made inaccurate statements in a Criminal Court Complaint and arrest paperwork. *(As amended)*

**P.G. 203-10, Page 1, Paragraph 5**

**PUBLIC CONTACT –  
PROHIBITED CONDUCT**

3. Said Detective Francisco Payano, while assigned to Narcotics Borough Bronx, on or about January 3, 2009, in the County of the Bronx, did knowingly make a false statement, which he did not believe to be true, in a written instrument bearing a legally authorized form notice to the effect that false statements made therein are punishable. *(Dismissed by Department before trial)*

**P.G. 203-10, Page 1, Paragraph 5**

**PUBLIC CONTACT –  
PROHIBITED CONDUCT  
MAKING A PUNISHABLE  
FALSE WRITTEN STATEMENT**

**Penal Law 210.45**



4. Said Detective Francisco Payano, while assigned to Narcotics Borough Bronx, on or about January 3, 2009, in the County of the Bronx, with intent to obtain a benefit or deprive another person of a benefit, committed an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act was unauthorized. (*Dismissed by Department before trial*)

**P.G. 203-10, Page 1, Paragraph 5**

**Penal Law 195.00 (1)**

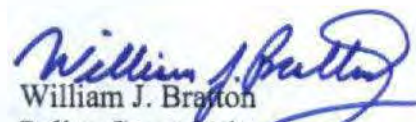
**PUBLIC CONTACT –  
PROHIBITED CONDUCT  
OFFICIAL MISCONDUCT**

In a Memorandum dated November 16, 2015, Assistant Deputy Commissioner David S. Weisel found Police Officer Francisco Payano Guilty of Specifications 1 and 2 in Disciplinary Case No. 2011-5039. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

I have considered the totality of the circumstances and issues in the misconduct for which Police Officer Payano has been found Guilty of and deem that separation from the Department is warranted. However, instead of an outright dismissal from the Department, I will permit an alternative manner of separation from the Department for Police Officer Payano at this time.

It is therefore directed that an *immediate* post-trial negotiated agreement be implemented with Police Officer Payano in which he shall immediately file for vested-interest retirement, forfeit thirty-one (31) suspension days (previously served), waive all time and leave balances, including terminal leave, and waive all suspension days, with and without pay, if any, and be placed on one (1) year dismissal probation.

Such vested-interest retirement shall also include Police Officer Payano's written agreement to not initiate administrative applications or judicial proceedings against the New York City Police Department to seek reinstatement or return to the Department. If Police Officer Payano does not agree to the terms of this vested-interest retirement agreement as noted, this Office is to be notified without delay. This agreement is to be implemented **IMMEDIATELY**.

  
William J. Bratton  
Police Commissioner



POLICE DEPARTMENT

November 16, 2015

-----X  
In the Matter of the Charges and Specifications :

Case No.

- against - :

2011-5039

Police Officer Francisco Payano :

Tax Registry No. 933155 :

Quartermaster Section :

-----X  
At:

Police Headquarters  
One Police Plaza  
New York, New York 10038

Before:

Honorable David S. Weisel  
Assistant Deputy Commissioner - Trials

APPEARANCE:

For the Department:

Beth Douglas, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, New York 10038

For the Respondent:

John Tynan, Esq.  
Worth, Longworth & London  
111 John Street – Suite 640  
New York, NY 10038

To:

HONORABLE WILLIAM J. BRATTON  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NEW YORK 10038

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P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT

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P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT  
Penal Law 195.00 (1) – OFFICIAL MISCONDUCT

The Department was represented by Beth T. Douglas, Esq., Department Advocate's Office. Respondent was represented by John P. Tynan, Esq., Worth, Longworth & London, LLP.

Respondent pleaded Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

FINDINGS AND ANALYSIS

The charges and specifications in this case arise from testimony and statements in paperwork, given by Respondent following the arrest of five individuals at [REDACTED] on January 2, 2009. On that day, Sergeant Jose Garcia supervised a team of seven Narcotics Borough Bronx officers, including Respondent, conducting enforcement within the confines of the 47 and 49 Precincts (Department's Exhibit [DX] 1, tactical plan; DX 2, Respondent's activity log; DX 3, Garcia's activity log). Respondent was the arresting officer assigned to the lead vehicle with Garcia.

At approximately 1330 hours, five individuals were arrested for either criminal sale or criminal possession of a controlled substance. Four allegedly were buyers and one, Person A, was the seller. On March 19, 2009, Respondent testified in front of a grand jury in the case against Person A, who was charged with criminal sale and possession of narcotics (DX 20, grand jury minutes). Person A was indicted, and in January 2010, Respondent again testified as to the events surrounding Person A's arrest during a suppression hearing. During that hearing, defense counsel presented surveillance footage from the day of the arrest that contradicted the version of events about which Respondent previously had testified. As a result, the charges against Person A were dismissed.

After the conclusion of the suppression hearing, Bronx Assistant District Attorney Michele Melnick contacted the Internal Affairs Bureau to report that Respondent had testified falsely in a court proceeding related to an observation sale of narcotics. Melnick informed IAB



that Respondent's testimony did not match the surveillance footage produced by Person A's attorney. Respondent subsequently was indicted on charges of perjury and official misconduct, but was acquitted at trial (Tr. 28, 245).

Specification No. 1.

Respondent is charged with giving inaccurate testimony during a criminal court proceeding. Specifically, that he observed a hand-to-hand drug transaction between Person A, Carolyn Baker, Jesse Collins, and Person B in front [REDACTED] at approximately 1312 hours on January 2, 2009, and that he personally recovered drugs from those individuals.

Before the grand jury in March 2009, and at the suppression hearing in January 2010, Respondent described the following series of events. At approximately 1312 hours on January 2, 2009, while in an unmarked vehicle with Sergeant Jose Garcia, he observed three individuals, later identified as Baker, Collins, and Person B, walking near the corner of [REDACTED]. They were approached by a fourth individual, later identified as Person A. Respondent then observed three hand-to-hand transactions, during which Person A received money in exchange for small objects. Baker, Collins, and Person B then began walking back on [REDACTED] and Person A walked toward [REDACTED]. While in his vehicle, Respondent attempted to follow Baker, Collins, and Person B but lost sight of them. He canvassed the area for 20 minutes trying to find them, but ultimately ended up parking back in front [REDACTED].

Respondent then saw Baker, Collins, and Person B walking towards the entrance [REDACTED]. He radioed two other members of his team, Detectives Christopher Jones and Dina Moretti, and told them to stop the three individuals entering the building. Jones and



Moretti entered the building. A few minutes later, Respondent entered the vestibule, where Jones and Moretti had Baker, Collins, Person B, and Person A stopped. Respondent searched each individual in custody and recovered the following: one bag of crack cocaine from Baker, one bag of crack cocaine from Collins, one bag of crack cocaine from Person B, and sixteen bags of crack cocaine from Person A.

When confronted with the surveillance footage during the suppression hearing, Respondent began to second-guess the location of the alleged observation sale and asserted that the location he previously had testified to was an estimate (DX 20, grand jury minutes; DX 21, suppression hearing minutes).

At the Department trial, Respondent testified again about the events of January 2, 2009 (Tr. 415-30). His testimony was consistent with the accounts given during both the grand jury and suppression hearings.

Baker and Collins, both admitted crack users, testified at trial that on January 2, 2009, they planned to visit an apartment inside [REDACTED] to purchase and smoke crack. They were stopped inside the vestibule, however. Both testified that prior to entering [REDACTED], they stopped at a convenience store to purchase a crack pipe, but denied having purchased crack from Person A on the street. Both also denied having crack cocaine in their possession when they were arrested, though Collins admitted to having the crack pipe (Tr. 116-18, 120, 124, 143, 146-48).

Person A testified during Respondent's criminal trial that he did not sell drugs on January 2, 2009. He asserted that the crack recovered from his jacket was planted on him by Jones while he was stopped in the vestibule (DX 22, transcript of Person A's testimony).

Robert Bailey, the fifth individual arrested on January 2, 2009, testified at trial that he went to [REDACTED] to visit a friend. He admitted to having purchased crack that day,



but testified that he purchased it from an apartment on [REDACTED], not on the street in front [REDACTED]. Bailey acknowledged that he was in possession of both crack and a crack pipe that day, but claimed that he does not smoke crack and merely was delivering the drugs and crack pipe to a friend who lived at 3940 Bronx Boulevard (Tr. 176-77, 180-82).

Person B was interviewed by Department investigators on January 28, 2010, about his arrest on January 2, 2009. During that interview, Person B claimed that he was planning to visit an acquaintance who lived at [REDACTED]. He claimed that he never before had seen the other individuals he was arrested with in the vestibule and denied being in possession of crack (DX 23, interview transcript).

At trial, Garcia testified that at some point on January 2, 2009, either he or Respondent was notified by Jones and Moretti to respond to [REDACTED]. When they arrived, five subjects were stopped in the vestibule of the building. He testified that at no point earlier that day had he seen any of the individuals in the vicinity [REDACTED]. Furthermore, at no point did Respondent indicate to Garcia that he had just witnessed a narcotics transaction in front [REDACTED] and therefore no canvass for lost subjects was conducted [REDACTED].

Garcia further testified that in January 2010, Payano approached him about the testimony he had given during Person A's suppression hearing. Respondent told Garcia that "things were getting ugly" and he needed him to back up the version of events to which he had testified. Garcia testified that he agreed because he did not want him to lose his job (Tr. 308, 311).

On June 17, 2010, during an official Department interview, Garcia told investigators the version of events relayed by Payano during their discussion in January. At some point during that interview, however, Garcia admitted that Payano had not observed a drug transaction in front of [REDACTED] and no subsequent canvass for lost subjects occurred.



Department investigators interviewed Garcia again on August 25, 2010. During the second interview, Garcia admitted that Respondent had asked him to back up the version of events that he had testified to during the suppression hearing (Tr. 313-15, 317).

While Respondent admitted having a discussion with Garcia after testifying at Person A's suppression hearing, he denied asking him to back up his story (Tr. 432-33, 497).

Surveillance footage from January 2, 2009, from cameras positioned both inside and outside [REDACTED] between 1220 to 1410 hours depicted the following series of events. At 1328 hours, Baker and Collins entered the vestibule to the building and rang the intercom. Less than a minute later, Jones and Moretti entered the vestibule as Person A approached the door, from the lobby, inside the building. Baker, Collins and Person A were placed against the wall in the vestibule as they were searched by Jones and Moretti. Person B then entered the vestibule and was handcuffed as Jones and Moretti continued to search Baker, Collins and Person A. At 1333 hours, two additional members of the enforcement team arrived. At 1335, Bailey entered the vestibule and walked into the lobby. Moretti followed Bailey, took him into custody, and brought him back into the vestibule. At 1342, Garcia entered the vestibule, followed shortly thereafter by Respondent. Respondent distributed prisoner property envelopes to Jones and began to search Collins. At 1348, Baker, Person B, Person A and Bailey were led out of the vestibule and into the prisoner van parked in front of the building. Shortly thereafter, Respondent and Garcia led Collins out of the vestibule to the prisoner van (DX 19, surveillance video).

At no time on or about 1312 hours did Baker, Collins, Person B, or Person A appear outside of [REDACTED] and engage in any drug transaction. In fact, the footage corroborated the testimony of both Baker and Collins, as they are seen for the first time walking down [REDACTED] at approximately 1328 hours.



Respondent's version of events is simply not supported by the surveillance footage from the day of the incident. There was no sale and the video proves it. There is really not that much more to say. It proves that Respondent's account is a lie and that Garcia, Baker, Collins, Person B, Person A and Bailey are credible.

Additionally, this Court finds Respondent's assertion that both he and Garcia canvassed the area surrounding [REDACTED] for 20 minutes incredible. He testified that Baker, Collins, and Person B became lost subjects after they purchased drugs from Person A. Respondent and Garcia were in their vehicle only 90 feet away when this supposedly occurred, about the distance of one base to another on a baseball diamond (Tr. 416-17). Baker, Collins, and Person B allegedly walked away on foot. Respondent remembered the hand-to-hand sale in detail, yet he could not state where he drove after the sale in order to apprehend these individuals. He said that he would have been driving quickly, consistent with an attempted apprehension of narcotics suspects. He was in a car and they were on foot. Respondent gave no explanation for how they all got away and disappeared for 20 minutes. This testimony was illogical and did not have the ring of truth.

At trial, Respondent maintained that he is the only person involved in this incident who has testified consistently about what occurred, and that everyone else involved was lying to serve their own interests. This Court acknowledges that Garcia (and Jones and Moretti, but they were not called as witnesses) has pleaded guilty to charges and specifications arising from this incident, and as a result may have been motivated to some degree by a desire to save himself. There is, however, no evidence of other bias on his part. At trial he appeared chagrined at what he had done. There was no sign that he was trying to harm Respondent; if anything, he appeared reluctant to do so.



Additionally, that Respondent has more or less maintained the same version of events since the incident occurred does not indicate his credibility, as his counsel asserted. The truly relevant consistency is that Respondent consistently has failed to take responsibility for his actions, despite overwhelming contradictory evidence.

The criminal histories of the persons arrested actually work against Respondent. Baker, Collins, Person B and Person A all had been arrested on drug-related charges prior to January 2, 2009 (Tr. 133, 155; DX 22 at pp. 584-85; DX 23 at p. 12). In fact, at trial Baker admitted that she actually had been arrested by Moretti in the past (Tr. 133). While evidence of prior crimes may be introduced as evidence of a witness's propensity to lie, this Court does not find the criminal histories of the arrestees fatal to their credibility. On the contrary, the criminal histories of the persons involved actually work against Respondent and suggest that Respondent accurately selected persons that might buy or sell drugs, but in fact no sale took place.

In sum, the surveillance footage showed that no hand-to-hand drug transaction occurred outside [REDACTED] at the time Respondent said it did. Furthermore, the footage from inside the vestibule shows that Respondent only searched Collins and did not physically search any of the other arrestees. As a result, this Court concludes that the Department proved by a preponderance of the credible evidence that Respondent lied about witnessing the sale and subsequent search of the arrestees. Accordingly, Respondent is Guilty of Specification No. 1, giving inaccurate statements during a criminal court proceeding.

#### Specification No. 2

Respondent also is charged with making inaccurate statements in the arrest paperwork and criminal court complaints. Following the arrests, Respondent submitted arrest reports for Baker, Collins, Person B, Person A and Bailey. The arrest reports all indicated that the offense



location was [REDACTED]." Respondent also completed property clerk invoices indicating that he was the finder of property for all five arrestees [REDACTED] reports; [REDACTED]

Criminal court complaints signed by Respondent indicated that at 1345 hours in front of [REDACTED] he observed Person A receive money from Baker, Collins, and Person B separately in exchange for small plastic bags believed to be crack cocaine (DX 14). In the criminal complaints for Baker, Collins, and Person B, Respondent stated that he observed each to be in possession of one ziplock bag of what he believed to be crack cocaine (DX 15-17). In the criminal complaint against Bailey, Respondent stated that he observed Bailey to be in possession of one glass pipe with a black tar-like residue as well as one ziplock of crack cocaine (DX 18). All of the complaints indicated that these observations occurred in front of [REDACTED] [REDACTED] except for Bailey's where the complaint stated the conduct occurred inside that building.

As previously stated, the surveillance footage shows that the only arrestee Respondent had contact with in the vestibule was Collins. He did not search nor recover anything from Baker, Person B, Person A or Bailey. Therefore, Respondent is found Guilty of Specification No. 2.

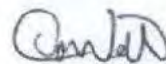
#### PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 1, 2003. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.



Lying about the sale of drugs, causing the imprisonment of individuals that did not commit the crimes charged, and falsifying Department paperwork is an extraordinary ethical and professional failure. As such, it is recommended that Respondent be DISMISSED from the Department. See Case Nos. 2010-2753 & -3188 (Sept. 21, 2015) (detective terminated for lying about making undercover drug buys, causing the imprisonment of innocent persons, and false Department paperwork on multiple occasions); Case No. 85399/09 (Sept. 21, 2012) (termination for conspiring with other members of team to fabricate the facts regarding arrest of four innocent individuals for drug sales); Matter of McDonough v. Bratton, 251 A.D.2d 51 (1st Dept. 1998) (in light of officer lying about illegal search, seizure and arrest, as well as consistent pattern of lying to supervisors, prosecutors and other officials concerning the arrest, termination was neither shockingly unfair nor disproportionate).

Respectfully submitted,



David S. Weisel  
Assistant Deputy Commissioner – Trials



POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER FRANCISCO PAYANO  
TAX REGISTRY NO. 933155  
DISCIPLINARY CASE NO. 2011-5039

Respondent received an overall rating of 4.5 “Highly Competent/Extremely Competent” on his last three annual performance evaluations. [REDACTED]

[REDACTED] He has been awarded two medals for Excellent Police Duty.

On January 29, 2010, Respondent was placed on modified duty as a result of the charges and specifications in this case. From June 16 to July 15, 2011, Respondent was suspended from duty. Since July 15, 2011, Respondent has been on modified duty.

On June 19, 2012, Respondent was demoted from Detective to Police Officer as a result of the charges and specifications in this case.

For your consideration.



David S. Weisel  
Assistant Deputy Commissioner – Trials